

ORDER NO. 3187

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Competitive Product Prices
Priority Mail Express, Priority Mail &
First-Class Package Service Contract 5
(MC2016-9)
Negotiated Service Agreement

Docket No. CP2016-11

ORDER APPROVING AMENDMENT TO PRIORITY MAIL EXPRESS,
PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE
NEGOTIATED SERVICE AGREEMENT

(Issued March 29, 2016)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail Express, Priority Mail & First-Class Package Service negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

¹ Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 5, with Portions Filed Under Seal, March 24, 2016 (Notice). The Amendment is attached to the Notice (Amendment).

In Order No. 2796, the Commission approved the Priority Mail Express, Priority Mail & First-Class Package Service Contract 5 negotiated service agreement (Existing Agreement).² On March 24, 2016, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. Notice at 1.

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. *Id.* The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. § 3633. *See id.*

II. COMMISSION ANALYSIS

The Commission has reviewed the Notice and the Amendment filed under seal.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Existing Agreement requires the customer to manifest contract packages using the Electronic Verification System (eVS).³ The Amendment permits the customer

² See Docket Nos. MC2016-9 and CP2016-11, Order Adding Priority Mail Express, Priority Mail & First-Class Package Service Contract 5 to the Competitive Product List, November 2, 2015 (Order No. 2796).

³ Docket Nos. MC2016-9 and CP2016-11, Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 5 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, Amendment, and Supporting Data, October 22, 2015, Attachment B at 2 (Request).

to use eVS or Postal Service-approved PC Postage vendors to ship contract packages. Notice, Attachment A at 1.

The Amendment does not materially affect the underlying financial analysis of the Existing Agreement. Thus, the Commission finds that the Existing Agreement, as amended, comports with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

Other considerations. The Postal Service states that the Amendment shall become effective on the day after the date that the Commission completes its review. Notice at 1. The Existing Agreement is set to expire on February 2, 2019, unless, among other things, the customer terminates the contract with 30 days' written notice to the Postal Service, the Postal Service terminates the contract with 90 days written notice to the customer, or it is renewed by mutual agreement.⁴

The Amendment does not modify the Existing Agreement's provision that allows the parties to extend the Existing Agreement for two 90-day periods if a successor agreement is being prepared and the Commission is notified within at least seven days of the Existing Agreement expiring.⁵

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

⁴ Request, Attachment B at 8. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

⁵ *Id.* As the Commission noted in Order No. 1773, the Postal Service clarified that substantially similar language in Priority Mail Contract 60 contemplates the Postal Service filing any notices of extension with the Commission *at least one week prior to* the expiration of the contract, as opposed to the instant contract's "within at least seven (7) days of the contract's expiration date." See Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013, at 3; see also Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2.

III. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Express, Priority Mail & First-Class Package Service Contract 5 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary